

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INTEROCEAN COAL SALES, LDC,

Plaintiff,

v.

EVONIK TRADING GmbH, an alien
corporation, EVONIK DEGUSSA
CORPORATION, an Alabama corporation,
EVONIK INDUSTRIES AG, an alien
corporation and EVONIK STEAG GmbH, an
alien corporation,

Defendants.

CIVIL ACTION 11cv0940 (NRB)

DECLARATION OF MATTHIAS WEGENER

Matthias Wegener hereby declares pursuant to 28 U.S.C. § 1746:

1. I am over eighteen years of age, am of sound mind and am competent to make this declaration. I have personal knowledge of the facts set forth in this declaration based on my employment with Evonik Industries AG and diligent investigation also for a reasonable time prior.

2. I have been a member of the legal department of Evonik Industries AG, a German stock corporation which has its principal place of business in Essen, Germany, since January 1, 2007.

3. I submit this declaration in support of Evonik Industries AG's motion to dismiss all of plaintiff Interocean Coal Sales, LDC's ("Interocean") claims against Evonik Industries AG in the above-captioned action (the "Action").

4. Evonik Industries AG is not a party to the May 2008 Steam Coal Agreement referenced in Interocean's Complaint filed in this Action.

5. Evonik Industries AG has no registered agent in New York authorized to accept service of process.

6. Evonik Industries AG is not registered or licensed to do business in the State of New York.

7. Evonik Industries AG has not been served with a Complaint or Summons issued by the United States District Court for the Southern District of New York by way of the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in this Action.

8. Evonik Industries AG functions exclusively as a holding company. It does not manufacture anything.

9. In February 2010, Evonik Industries AG owned 5.1% of Evonik Steag GmbH, and Evonik Industries AG's wholly owned subsidiary, RBV Verwaltungs-GmbH, owned 94.9% of Evonik Steag GmbH.

10. As of March 2, 2011, Evonik Industries AG's wholly owned subsidiary, RBV Verwaltungs-GmbH, is a minority owner of defendant Evonik Steag GmbH ("Evonik Steag"), each of which is a separate corporation.

11. Evonik Steag is the corporate parent to defendant Evonik Trading GmbH ("Evonik Trading"), which is a separate corporation.

12. Evonik Industries AG was never known as Evonik Trading GmbH.

13. While Evonik Industries AG may from time to time set policy for all of its subsidiaries, it has never asserted control over the daily activities, daily functioning or daily business practices of Evonik Trading.

14. Evonik Industries AG has never asserted control or ownership over any payments due or allegedly due to Interocean pursuant the Steam Coal Agreement.

15. Evonik Industries AG is the majority owner of Evonik Degussa GmbH, a specialty chemicals company not named in this Action.

16. Evonik Degussa Corporation is a wholly owned subsidiary of Evonik Degussa GmbH.

17. Each entity identified in the preceding paragraphs maintains its own corporate form, operates through distinct and independent boards of directors, and has its own officers.

18. Furthermore, Evonik Industries AG has:

- not been domiciled in New York;
- not registered to do business in New York;
- not registered an agent for service of process in New York;
- not designed any product or service in New York;
- not manufactured any product in New York;
- not processed any product in New York;
- not sold products or services in New York;
- not shipped, delivered or transported products in New York;
- not derived any revenue from goods used or consumed, or services rendered, in New York;
- not directed advertisements at residents of New York;
- not owned real or personal property in New York;
- not filed or been obligated to file tax returns in New York;
- not paid, or been obligated to pay, income tax, property tax or any other type of tax in New York;
- not opened or maintained an office in New York;
- not opened or maintained a bank account, brokerage account or other account in New York;
- not kept a post office box or postal address in New York;
- not had directors or officers located in New York;

- not located employees to work in New York;
- not commenced legal proceedings in New York and, apart from the present matter, not been sued in New York; and
- not engaged in any systematic or continuous activity in New York.

19. For the foregoing reasons, Evonik Industries AG did not foresee that it would be or could be haled into a court in New York to defend this action.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED: March 25, 2011



Matthias Wegener